

NEBRASKA ADMINISTRATIVE CODE

Title 48 - Department of Banking and Finance

Chapter 10 - RECORDKEEPING BY INVESTMENT ADVISERS

001    GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120(3) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule relating to recordkeeping by investment advisers is consistent with investor protection and is in the public interest.

001.03 The Director may, on a case-by-case basis, and with prior written notice to the affected persons, require adherence to additional standards or policies, as deemed necessary in the public interest.

001.04 The definitions in 48 NAC 2 shall apply to the provisions of this Rule, unless otherwise specified.

002    GENERAL RECORD-KEEPING REQUIREMENTS. Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:

002.01 A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

002.02 General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

002.03 A memorandum of each order given by the investment adviser for the purchase or sale of any security; of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security; and of any modification or cancellation of any such order or instruction.

002.03A Such memorandum shall identify:

002.03A1 The terms and conditions of the order, instruction, modification or cancellation;

002.03A2 The person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and

002.03A3 The account for which entered, the date of entry, and the broker-dealer or other entity by or through whom executed, where appropriate.

002.03B The memorandum shall designate whether the orders were entered pursuant to the exercise of discretionary power.

002.04 All checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser.

002.05 All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

002.06 All trial balances, financial statements, and internal audit working papers relating to the business of the investment adviser.

002.07 Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

002.07A The recommendation made or proposed to be made and the advice given or proposed to be given;

002.07B The receipt, disbursement or delivery of funds or securities; or

002.07C The placement or execution of any order to purchase or sell any security.

002.07D The investment adviser shall not be required to keep the following written communications:

002.07D1 Unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and

002.07D2 A record of the names and addresses of the persons to whom the investment adviser sent any notice, circular or other advertisement offering any report, analysis, publication or other investment adviser service, which was sent to more than ten persons, except if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain a memorandum describing the list and the source thereof with the copy of such notice, circular or advertisement.

002.08 A record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

002.09 All powers of attorney and other evidence of the grant of any discretionary authority by any client to the investment adviser or to any third party, or copies thereof.

002.10 All written agreements, or copies thereof, entered into by the investment adviser with any client relating to the business of such investment adviser.

002.11 A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser

circulates or distributes, directly or indirectly, to ten or more persons, other than persons affiliated with such investment adviser.

002.11A If such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommends the purchase or sale of a specific security but does not state the reasons for the recommendation, the investment adviser shall retain a memorandum indicating the reasons for the recommendation.

002.11B For purposes of Section 002.11, persons affiliated with an investment adviser include any officer, director, managing member, general partner, or employee of the investment adviser, and individuals registered as its investment adviser representatives.

002.12 A record of every transaction in a security in which the investment adviser or any investment adviser representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership.

002.12A Such record shall include:

002.12A1 The title and amount of the security involved;

002.12A2 The date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition);

002.12A3 The price at which it was effected; and

002.12A4 The name of the broker-dealer or other entity with or through whom the transaction was effected.

002.12B Such record may contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

002.12C A transaction shall be recorded within ten days after the end of the calendar quarter in which the transaction was effected.

002.12D The investment adviser need not keep records required by Section 002.12 of this Rule for the following transactions:

002.12D1 Transactions effected in any account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any direct or indirect influence or control; and

002.12D2 Transactions in securities which are direct obligations of the United States.

002.12E For purposes of Section 002.12 of this Rule, "investment adviser representative" shall mean:

002.12E1 Any partner, officer, director or limited liability company member of the investment adviser;

002.12E2 Any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made;

002.12E3 Any employee who, in connection with his or her duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and

002.12E4 Any person in a control relationship to the investment adviser, any affiliated person of such controlling person, and any affiliated person of such affiliated person who obtains information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations. "Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

002.12F An investment adviser shall not be deemed to have violated the provisions of Section 002.12 of this Rule because of its failure to record securities transactions of any investment adviser representative if the investment adviser establishes that adequate procedures were instituted and reasonable diligence was used to promptly obtain reports of all transactions required to be recorded.

002.13 Notwithstanding the provisions of Section 002.12 above, if the investment adviser is primarily engaged in a business or businesses other than advising advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any investment adviser representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership.

002.13A Such record shall include:

002.13A1 The title and amount of the security involved;

002.13A2 The date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition);

002.13A3 The price at which it was effected; and

002.13A4 The name of the broker-dealer or other entity with or through whom the transaction was effected.

002.13B Such record may contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission

that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

002.13C A transaction shall be recorded within ten days after the end of the calendar quarter in which the transaction was effected.

002.13D The investment adviser is not required to keep records for the following transactions:

002.13D1 Transactions effected in any account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any direct or indirect influence or control; and

002.13D2 Transactions in securities which are direct obligations of the United States.

002.13E An investment adviser is "primarily engaged in a business or businesses other than advising advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than fifty percent (50%) of its total sales and revenues, and its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

002.13F For purposes of Section 002.13 of this Rule, "investment adviser representative," when used in connection with a company primarily engaged in a business or businesses other than advising advisory clients, means:

002.13F1 Any partner, officer, director, member or employee of the investment adviser:

002.13F1a Who makes any recommendation;

002.13F1b Who participates in the determination of which recommendation shall be made;

002.13F1c Whose functions or duties relate to the determination of which recommendation shall be made; or

002.13F1d Whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and

002.13F2 Any person in a control relationship to the investment adviser, any affiliated person of such controlling person and any affiliated person of such affiliated person who obtains information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such

recommendations. "Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

002.13G An investment adviser shall not be deemed to have violated the provisions of Section 002.13 of this Rule because of its failure to record securities transactions of any investment adviser representative if the investment adviser establishes that adequate procedures were instituted and reasonable diligence was used to obtain reports of all transactions required to be recorded promptly.

002.14 In connection with the written statement required by 48 NAC 7.010:

002.14A A copy of such written statement and each amendment or revision to the written statement, given or sent to any client or prospective client of the investment adviser;

002.14B Any summary of material changes that is required by, but is not contained in, the written statement;

002.14C A record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or to any prospective client who subsequently becomes a client; and

002.14D A memorandum describing any legal or disciplinary event listed in Form ADV and presumed to be material, if the event involved the investment adviser or any of its supervised persons and is not disclosed in the written statements described in Section 002.14A, above. The memorandum must explain the investment adviser's determination that the presumption of materiality is overcome and must discuss the factors described in those items.

002.15 All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for, or demonstrate the calculation of, the performance or rate of return of any or all managed accounts or of securities recommendations contained in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, to ten or more persons, other than persons affiliated with such investment adviser.

002.15A With respect to the performance of managed accounts, the retention of all account statements, which reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of Section 002.15 of this Rule.

002.15B For purposes of Section 002.15 of this Rule, persons affiliated with an investment adviser include any officer, director, managing member, general partner, or employee of the investment adviser, and individuals registered as its investment adviser representatives.

002.16 Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

003 RECORDKEEPING BY INVESTMENT ADVISERS WITH CUSTODY OF CLIENT SECURITIES OR FUNDS. In addition to the records required by Section 002 above, an investment adviser which has custody or possession of securities or funds of any client shall be required to make and keep the following records:

003.01 A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts.

003.02 A separate ledger account for each such client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits.

003.03 Copies of confirmations of all transactions effected by or for the account of any such client.

003.04 A record for each security in which any such client has an interest, showing the name of each client having any interest in that security, the amount or interest of each client, and the location of that security.

004 RECORDKEEPING BY INVESTMENT ADVISERS WHICH RENDER INVESTMENT SUPERVISORY OR MANAGEMENT SERVICES. In addition to the records required by Section 002 above, an investment adviser which renders any investment supervisory or management service to any client shall, to the extent the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current the following records with respect to each portfolio being supervised or managed:

004.01 Separate records for each such client showing the securities purchased and sold, and the date, amount and price of each such purchase and sale; and

004.02 For each security in which any such client has an interest, records from which the investment adviser can promptly furnish the name of each such client, and the current interest of such client.

004.03 For purposes of this Section, "investment supervisory services" means the giving of continuous advice as to investing funds based on each client's individual needs.

005 CLIENT IDENTITY. Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment advisory services is indicated by numerical or alphabetical code or some similar designation, provided the investment adviser can identify, by name, the client represented by each code or designation upon a request by the Director.

006 RETENTION.

006.01 All books and records required by this Rule, except for books and records required by the provisions of Sections 002.11 and 002.15 above, shall be maintained for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record.

006.02 Partnership articles, articles of incorporation, articles of organization as a limited liability corporation, and any amendments thereto, and charters, minute books, and stock certificate books of the investment adviser, and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

006.03 Books and records required by Sections 002.11 and 002.15 above, shall be maintained for a period of not less than five years from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.

006.04 The records identified in 006.01 and 006.03 above shall be maintained and preserved in the appropriate office of the investment adviser for the first two years. Thereafter, the records may be maintained at any other location which provides the investment adviser with access to the records necessary to comply with requests for production of such records by the Director.

007 PRESERVATION OF BOOKS AND RECORDS. Before ceasing to conduct business as an investment adviser, an investment adviser shall arrange for and be responsible for preserving the books and records required to be maintained and preserved under Section 002 for the remainder of the period specified therein and shall notify the Director in writing of the exact address where such books and records will be maintained during such period.

008 PRODUCTION OF BOOKS AND RECORDS. The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form.

008.01 If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

008.01A Arrange the records and index the films or computer storage medium so as to provide immediate access to any particular record;

008.01B Provide a facsimile enlargement of film, a computer printout, or copy of the computer storage medium which the Director may request;

008.01C Store the original and one other copy of the film or computer storage medium separately for the time required;

008.01D With respect to records stored on computer storage medium, maintain procedures to maintain, preserve, and access the records so as to reasonably safeguard the records from loss, alteration, or destruction; and

008.01E With respect to records stored on photographic film, at all times have available for the Director's examination of its records pursuant to Section 8-1103(7) of the Act, facilities for immediate, easily readable projection of the film and for production of easily readable facsimile enlargements.

008.02 An investment adviser may maintain and preserve records on computer tape or disk or other computer storage medium if such records are created by the investment adviser on electronic media or are received by the investment adviser solely on electronic media or by electronic data transmission in the ordinary course of the investment adviser's business.

009 EXCEPTIONS. The provisions of this Rule shall not apply to any investment adviser whose principal place of business is not located in this state provided:

009.01 Such investment adviser is registered in the state in which its principal place of business is located; and

009.02 Such investment adviser is in compliance with the recordkeeping requirements established by the state in which its principal place of business is located.

009.03 For purposes of this Section, principal place of business shall mean the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.